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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/649,434

08/28/2003

Robert C. Weisgerber

5191

7590

01/17/2006

DAVID PETER ALAN, ESQ.  
81 Second St.  
South Orange, NJ 07079

EXAMINER

FULLER, RODNEY EVAN

ART UNIT

PAPER NUMBER

2851

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/649,434

Applicant(s)

WEISGERBER, ROBERT C.

Examiner

Rodney E. Fuller

Art Unit

2851

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☒ Claim(s) 1-11 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

RODNEY FULLER  
PRIMARY EXAMINER

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because of the following:

- a. The abstract exceed 150-words.
- b. The phrase "A method is disclosed" can be implied.

Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following items:
- a. (Page 6, 2<sup>nd</sup> paragraph, line 10): The word "horizont6al" appears to be a typographical error.
  - b. (Page 12, 2<sup>nd</sup> paragraph, line 6): The word "pulldowni" appears to be a typographical error.
  - c. (Page 12, 3<sup>rd</sup> paragraph, line 4): The word "sown" appears to be a typographical error.

***Drawings***

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following items must be shown or the feature(s) canceled from the claim(s):

- a. (Claim 1): There is no structure shown in the drawings capable of performing the steps and/or there is no diagram showing the steps of:
  - i. photographing or otherwise preparing stereoscopic images
  - ii. storage of images
  - iii. preparation of motion picture films
  - iv. exhibition... at a frame rate higher than that employed in conventional motion picture exhibition systems
  - v. projector... capable of pulldown of film
- b. (Claim 2): film with film format at an aspect ration as wide as 2.4:1 or narrower

- c. (Claim 2): film with five perforations per frame
- d. (Claim 6): shutter which subtends ninety degrees of arc or less. The Shutter (ref.# 3) in Figure 3 appears to have an arc greater than 90 degrees.
- e. (Claims 9 and 10): There is no structure shown in the drawings capable of performing the steps and/or there is no diagram showing the steps of:
  - i. conversion of motion picture films
  - ii. wherein, synthesized motion picture images are interpolated between frames of the motion picture
  - iii. wherein, synthesized motion picture images depict a state of appearance approximately halfway between the previous and next image
- f. (Claim 12): means for accomplishing pulldown of films
- g. (Claim 12): means for projecting forty-eight or more frames of motion picture film during each second
- h. (Claim 15): a projector capable of accomplishing pulldown of film

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

6. Claims 1-11 and 15 is objected to because of the following item(s):
  - a. It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.
  - b. Claims 2-11 depend from claim 1 and therefore include the deficiencies of claim 1.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. (Claim 1): The limitation "at a frame rate higher than that employed in conventional motion picture" is indefinite. On page 4 of the specification, the applicant states "all systems currently in use exhibit films at 24 frames per second." This assertion is not conclusive that all "conventional" motion picture exhibition systems exhibit at "only" 24 frames per second.

b. (Claim 1): The limitation "at a faster speed than that employed by conventional motion picture projectors" is indefinite.

c. Claims 2-11 depend from claim 1 and therefore include the deficiencies

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 1-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding independent claims 1, 12 and 15, the claims set forth (claim 1) a "projector also capable of pulling down of film between frames at a faster speed than

that employed by conventional motion picture projectors;" (claim 12) "a means for accomplishing pulldown of films from one frame to the next frame in succession in five milliseconds or less;" and (claim 15) "a projector capable of pulling down of film one frame to the next in five milliseconds or less."

The specification states (page 12, 2<sup>nd</sup> paragraph) that "Projectors are currently available that can accomplish film pulldown in five milliseconds or less;" and an example is a projector manufactured by Ballentine Cinema Corp. However, the specification states that "The projector used in the practice of the invention can accomplish pulldown in half the time required by conventional projectors." Thus, it appears that the Ballentine projector is considered a conventional projector and that the projector used in the invention can accomplish pulldown in half the time, i.e., 2 ½ milliseconds. However, there is no disclosure as to the applicant's projector.

Further, regarding claim 12, there is no disclosure as to the "means for accomplishing pulldown of films form one frame to the next frame in succession in five milliseconds or less" other than the disclosure related to the Ballentine projector, which does not appear to be a part of applicant's invention.

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.



Art Unit: 2851

12. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Goodhill, et al. (US 6,0189,473).

As best the examiner can ascertain the claimed invention due to the Objections and/or Rejections set forth above, Goodhill discloses all the structure set forth in the claims. The method steps set forth in Claims 1-12 are met by the operation and/or construction of the apparatus of Goodhill.

Regarding the apparatus Claims 12, Goodhill discloses "a light source (Fig. 4, ref.# 96), a single-blade shutter (Fig. 4, ref.# 99), a means (Fig. 4, ref.# 10) for accomplishing pulldown of films with one frame to the next frame in succession on five milliseconds or less, and a means (Fig. 4, ref.# 10) for projection forty-eight (column 2, line 58) or more frames of motion picture during each second." Note: The film transport system (ref.# 10) of Goodhill is adjustable between different film formats, pulldown rates and frame rates.

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodhill, et al. (US 6,019,473) in view of Atchison, et al. (US 6,570,706).

Regarding claims 13-15, Goodhill discloses a projection system that projects light onto a screen. However, Goodhill does not specifically set forth that the screen is a (Claim 13) "metallic screen," (Claims 14 and 15) "in which said screen features a gain of a factor of two or more." However, the use of a metallic screen with a gain of two or more is routine in the art as taught by Atchison (column 1, lines 62-66). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Goodhill by using a metallic screen in order to produce a brighter image and thus improve image perception of the final image.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Trumball (US 4,560,260) teaches that "Edison chose a frame rate of 48 fps (frames per second), which is rate that was found to avoid observable flickering." (column 1, 2<sup>nd</sup> paragraph)

Goodhill, et al. (US 2005/0036113) teaches that calculations can be made to budget the proper amount of time to move the gate based on different frame rates. (paragraph 0074)

Taylor, et al. (US 3,934,962), Zahn (US 3,348,749) and Isom (US 2,756,629) each disclose a pull down rate of five milliseconds or less.

Bernier (US 2,729,138), Lipton (US 5,481,321), McCormick (US 3,482,908), Hoch (US 3,363,966), Yarosh (US 2,415,550) and Smith (US

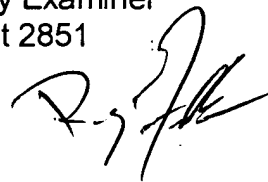
1,585,129) each disclose an apparatus for projection of motion pictures for delivery of a three-dimensional effect.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney E. Fuller whose telephone number is 571-272-2118. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on 571-272-2258. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rodney E Fuller  
Primary Examiner  
Art Unit 2851



January 11, 2006